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**Remarks**

Claims 1-28 are pending in the application.

Claims 1-9, 12-22 and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,813,250 B1 to Fine et al. (hereinafter "Fine").

Claims 10, 11, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fine in view of U.S. Patent Application Publication 2005/0080912 A1 to Finn (hereinafter "Finn"), and further in view of ANSI/IEEE Std. 802.1D, 1998 Edition (hereinafter "ANSI").

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel

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and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, she is respectfully requested to so indicate.

#### Rejection Under 35 U.S.C. 102

Claims 1-9, 12-22, and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Fine. The rejection is respectfully traversed.

Anticipation requires the presence in a single prior art disclosure of each and every element of the claimed invention, arranged as in the claim. The Fine reference fails to disclose each and every element of the claimed invention. Specifically, Fine does not teach or suggest "sending notification to one or more second bridges that a first bridge is scheduled for a software upgrade, thereby disturbing a first state of operation" as positively recited in Applicants' currently amended claim 1.

The Examiner suggests "upgrading software" and/or "a software upgrade" is taught by Fine's "as additional SST-PDUs are received, the device replaces stale information in its association table with newly received information" (col. 5, lines 38-39). This is incorrect. Fine's "replacing stale information" merely refers to replenishing the association table with information indicative of *network traffic conditions*, not

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performing changes that would permanently alter the actual operational characteristics of the system, as would occur with a software update. Fine explains:

*Each SST-PDU frame preferably contains, among other information, a field corresponding to the VLAN tag appended to the frame and, if the tag corresponds to a primary VLAN, a list of the associated secondary VLANs. Another field may be used to set the time interval by which the receiving device is to keep the information contained in the SST-PDU. As VLANs are moved among shared spanning trees and new primary VLANs are designated, new SST-PDUs are generated and exchanged among network devices so as to replace the previously stored information. (col. 5, lines 14-23, emphasis added).*

It is clear from the above that by "replace," Fine does not mean *introducing* new information and/or parameters to the system, as would definitively occur with "a software upgrade." Rather, Fine explains that the new SST-PDUs "are generated" as the system is in operation. Nothing that is "generated" during operation and/or as a result of normal operation can possibly be construed as "a software upgrade," which extraneously introduces operational parameters and/or algorithms to the system that were not previously present, by which the system will thenceforth function. Accordingly, the notion of Fine teaching anything similar to "a software upgrade" by the mere replenishment of an association table, which contains only network traffic conditions obtained in real time by way of the system's normal operation, is mistaken.

Applicants also respectfully disagree with Examiner's suggestion that "suspending" operation of a switch is taught by Fine with the "wait" state. By entering the "wait" state, operation of a switch is not completely shut down (suspended) as in the claimed invention, but instead only "messages tagged with the given VLAN designation" (wait state) are prevented from being forwarded. Furthermore, the invention claims "suspending VLAN registration information in one or more second bridges while a the software upgrade is taking place". Fine's discussion of the "wait" state only pertains

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only to the singular switch Fine is discussing, not any distinct "one or more second bridges".

Therefore, Fine does not anticipate independent claim 1, and claim 1 is patentable under 35 U.S.C. 102. Currently amended independent claims 14 and 27 recite relevant limitations similar to those of independent claim 1 and, as such, and at least for the same reasons as discussed above, are also not anticipated by Fine and are patentable under 35 U.S.C. 102.

Since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Fine.

Therefore, the rejection should be withdrawn.

**Rejection Under 35 U.S.C. 103(a)**

Claims 10, 11, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fine in view of Finn and further in view of ANSI. The rejection is traversed.

Each of these grounds of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 102 given Fine. Since the rejection under 35 U.S.C. 102 given Fine has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that the additional references supply that which is missing from Fine to render the independent claims anticipated, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.

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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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